



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP-174862

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 9, 2016, under Wis. Admin. Code, §HA 3.05(1), to review a decision by Milwaukee Enrollment Services to recover FoodShare (FS), a hearing was held on July 12, 2016, at Milwaukee, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the agency correctly determined an FS overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Illinois. He formerly resided in Milwaukee County.
2. On May 9, 2016 the Division of Hearings and Appeals issued a decision finding that petitioner committed an intentional program violation (IPV) by trafficking \$190 in FS at John Henry Distribution on August 6, 2011, case no. FOF-172664. Notices of the IPV, the IPV hearing, and the decision were sent to petitioner's last known address in [REDACTED], Illinois.

3. On May 10, 2016 the agency sent petitioner a notice informing him that he was overpaid \$190 in FS in August, 2011 due to trafficking misuse, claim no. [REDACTED]. The notice was sent to the same [REDACTED] Illinois address. Petitioner received the notice and filed this appeal.

### **DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). In addition, claims arising from FS trafficking-related offenses shall be recovered in the value of the trafficked benefits. 7 C.F.R. §273.18(c)(2). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The definition of “trafficking” includes the following at 7 C.F.R. §271.2: “(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.”

In case no. FOF-172664 the agency established that petitioner trafficked FS in the amount of \$190 by exchanging FS for cash. Therefore the overpayment notice was issued correctly; the result of the IPV decision mandated that petitioner was overpaid the value of the trafficked benefits.

Petitioner testified that he knew nothing about the IPV case. He stated that the [REDACTED] Illinois address was his niece’s address, and when he saw her she gave him the envelope with the overpayment notice but nothing else. There is a procedure in the IPV rules allowing for the IPV case to be reopened if the person claims good cause for not receiving the notice of the IPV hearing. The claim must be made within 30 days of the IPV decision.

Petitioner filed this appeal 31 days after the IPV decision. Furthermore, it would be difficult to find good cause when the IPV materials were sent to the same address as the overpayment notice that petitioner did receive.

I conclude that the agency correctly determined the FS overpayment.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid \$190 in FS based upon an IPV finding that he trafficked that amount in August, 2011.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to the Milwaukee County Circuit Court. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 13th day of July, 2016

\s\_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 13, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability